August XX, 2016

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Majority Leader
U.S. House of Representatives
H-107, The Capitol
Washington, DC 20515

The Honorable Steve Scalise
Majority Whip
U.S. House of Representatives
H-239, The Capitol
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
House Republican Conference Chair
U.S. House of Representatives
203 Cannon HOB
Washington, DC 20515

Dear Speaker Ryan, Majority Leader McCarthy, Majority Whip Scalise and Chair McMorris Rodgers:

The undersigned organizations and individuals are writing to voice our support for the Sentencing Reform Act (H.R. 3713), the Recidivism Risk Reduction Act (H.R. 759) and the Criminal Code Improvement Act (H.R. 4002). These bills are part of a larger effort spearheaded by Chairman Bob Goodlatte (R-Va.) and the House Judiciary Committee to enact long overdue reforms in the federal criminal justice system.

Congress does not have to look far to find empirical evidence that criminal justice reform promotes public safety, greater fairness in sentencing, and fiscal conservatism. More than 30 states,[1] including Georgia,[2] Mississippi,[3] Oklahoma,[4] South Carolina[5] and Texas[6], have enacted and implemented justice reinvestment initiatives focused on rehabilitation and treatment. These state-led reforms have made communities safer by successfully reducing recidivism and saving

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1 Adam Gelb, "31 States Reform Criminal Justice Policies Through Justice Reinvestment," The Pew Charitable Trusts, January 20, 2016 http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/01/31-states-reform-criminal-justice-policies-through-justice-reinvestment

2 Naomi Shavin, "A Republican Governor Is Leading the Country's Most Successful Prison Reform," The New Republic, March 31, 2015 https://newrepublic.com/article/121425/gop-governor-nathan-deal-leading-us-prison-reform

3 The Associated Press, "Gov. Phil Bryant signs criminal justice reform bill," March 31, 2014 http://blog.gulflive.com/mississippi-press-news/2014/03/gov_phil_bryant_signs_criminal.html

4 Tulsa World, "Gov. Mary Fallin signs four criminal justice reform bills," May 2, 2016 http://www.tulsaworld.com/business/tulsabusiness/business_news/government/gov-mary-fallin-signs-four-criminal-justice-reform-bills/article_24627893-99ff-59b5-9238-35b0965a3e2e.html

5 The Pew Charitable Trusts, "South Carolina's Public Safety Reform," July 6, 2010 http://www.pewtrusts.org/en/research-and-analysis/reports/2010/07/06/south-carolinas-public-safety-reform

6 Mike Ward, "Texas prison population shrinks as rehabilitation programs take root," Statesman, August 11, 2012 http://www.statesman.com/news/news/state-regional-govt-politics/texas-prison-population-shrinks-as-rehabilitatio-1/nRNRY/

taxpayers billions of dollars that had been slated for prison expansion and construction costs. Most importantly, even as prison populations declined, states saw crime rates fall.[7]

Republican states have pioneered these reforms. Red states had to find new and innovative paths to substantively reduce recidivism and reform sentencing policies that were causing prison populations and costs to skyrocket. State policymakers also found that smart reforms strengthened families and entire communities.

The federal government is lagging far behind these state reforms, In 1980, the number of prisoners in the federal corrections system hovered around 25,000. By 2013, that number skyrocketed to more than 219,000. Over the same period, related costs jump from $970 million to $6.7 billion.[8] In FY 2015, the BOP received more than $6.9 billion in funding.

While the federal prison population has dropped to slightly below 200,000 inmates, challenges still remain. As noted by the Department of Justice Inspector General Michael Horowitz, the budgetary growth related to the federal corrections system will continue to climb. According to Horowitz, the Federal Bureau of Prisons' (BOP) budget grew at "almost twice the rate" of other agencies in under the Department of Justice and now consumes 25 percent of the Department's discretionary budget.[9] Of federal agencies under the purview of the Department of Justice, only the FBI has a larger budget than the BOP.

The bills unanimously passed by the House Judiciary Committee are an extension of the commonsense reforms that have been passed and implemented in Republican states. Indeed, this is a conservative legacy, and one that Republicans in the House of Representatives should warmly embrace.

The Sentencing Reform Act (H.R. 3713) modifies (but does not eliminate) some mandatory minimum sentences; restores congressional intent for other mandatory minimums; expands the existing federal safety valve exception for low-level, nonviolent offenders; and, creates a second safety valve that allows judges to sentence below a 10-year mandatory minimum under certain carefully-considered conditions.

In addition, the Sentencing Reform Act also makes the Fair Sentencing Act of 2010 (which reduced the disparity between powdered cocaine and crack cocaine) retroactive. The benefits of this provision are limited and considered on a case-by-case basis to ensure that violent offenders remain in prison to serve their full sentence.

The Recidivism Risk Reduction Act (H.R. 759) begins incorporating in the federal system the rehabilitative and reentry reforms that have seen tremendous success in the states. As

7 The Pew Charitable Trusts, "Imprisonment and Crime Rates Fell in 30 States Over 5 Years," September 28, 2015 http://www.pewtrusts.org/en/multimedia/data-visualizations/2015/imprisonment-crime-rates-fell-in-30-states-over-five-years

8 The Pew Charitable Trusts, "Growth in Federal Prison System Exceeds States'," January 22, 2015 http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/01/growth-in-federal-prison-system-exceeds-states

9 Michael Horowitz, "Top Management and Performance Challenges Facing the Department of Justice - 2014," Office of the Inspector General, U.S. Department of Justice, November 10, 2014 https://oig.justice.gov/challenges/2014.htm

Chairman Chaffetz, the sponsor of H.R. 759, said after the bill was approved by the House Judiciary Committee, "More than 95 percent of people that go to prison will be released. Our collective goal should be to lower the recidivism rates and prepare inmates to integrate back into our communities."

To accomplish this goal, The Recidivism Risk Reduction Act requires a post-sentencing risk assessment of every federal prisoner to determine whether they are a low, moderate or high risk of becoming a repeat offender. The bill allows prisoners to earn time credits upon the completion of rehabilitative programs (including educational courses, religious services and work training) so they are incentivized to lower their risk of recidivism. This brings greater accountability to our corrections system and helps prevent simply warehousing prisoners.

Prisoners who earn time credits will be eligible to serve the remainder of their sentence in a halfway house, home confinement or under community supervision. Those prisoners who have committed serious or violent felonies are not eligible to earn time credits.

Finally, the Criminal Code Improvement Act (H.R. 4002) would restore the foundational principle of our criminal justice system: namely that no person should lose their liberty unless they commit a criminal act with a "guilty mind" (referred to as "mens rea" by legal scholars). This reform is critical for any just criminal system, but it is especially important today when there are so many federal criminal statutes that the Congressional Research Service can't even count them.

The best estimate is that there are 4,500 to 5,000 federal criminal statutes and more than 300,000 federal regulations that carry criminal penalties. As Professor John Baker once said, "There is no one in the United States over the age of 18 who cannot be indicted for some federal crime. That is not an exaggeration."[10] Today, it is simply impossible for Americans to have had fair notice or to know what laws they may unwittingly break in any given day. Making matters worse, Congress, in recent years, has had a proclivity for passing criminal laws with either weak *mens rea* requirements or no mens rea requirement at all.[11]

The Criminal Code Improvement Act would restore due process, fair notice and reverse the epidemic of over-criminalization that is currently haunting federal criminal law.

These three bills are not the only ones that the House of Representatives should consider this year. The undersigned organizations also urge votes on reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDPA) and the Due Process Act (H.R. 5283), which would reform federal civil asset forfeiture laws.

Sincerely,

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[10] Gary Fields and John R. Emshwiller, "Many Failed Efforts to Count Nation's Federal Criminal Laws," Wall Street Journal, July 23, 2011 http://www.wsj.com/articles/SB10001424052702304319804576389601079728920

[11] Brian W. Walsh, Tiffany M. Joslyn, "Without Intent: How Congress Is Eroding the Criminal Intent Requirement in Federal Law," Heritage Foundation, May 5, 2010 http://www.heritage.org /research/reports/2010/05/without-intent

Adam Brandon
FreedomWorks

Timothy Head
Faith & Freedom Coalition

Grover Norquist
Americans for Tax Reform

Eli Lehrer
R Street Institute

Russell Moore
Ethics & Religious Liberty Commission
Southern Baptist Convention

Andrew Clark
Generation Opportunity

Craig DeRoche
Prison Fellowship

Leon Wolf
RedState